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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,727	01/27/2000	David M. Austin	AUZ-001 P	8984

7590 03/09/2007

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EXAMINER	
ZIA, SYED	
ART UNIT	**PAPER NUMBER**
2131	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/491,727	AUSTIN ET AL.	
	Examiner	Art Unit	
	Syed Zia	2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to amendment filed on November 27, 2006. Applicant currently amended 18, and cancelled Claim 19. Therefore, presently pending claims are 1-18.

Response to Arguments

Applicant's arguments with respect to claims 1-18 filed on November 27, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Applicant amended Claim 18, and cancelled Claim 19. Therefore, previous rejection under 35 U.S.C. 101 has been withdrawn.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-18 of the instant Application No. 09/491727 (hereafter '727) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/027714 (hereafter '714). Although the conflicting claims are not identical, they are not patentably distinct from each other because in view of the obviousness type double patenting rationale enunciated in **Georgia-Pacific Corp. v. United States Gypsum Co., 195 F.3d 1322, 1326, 52 USPQ2d 1590, 1593 (Fed. Cir. 1999**, the instant application's '727 above mentioned claims merely detecting presence of observer program on host devices in network computing environment by comparing memory content which is a obvious variation of scanning a host computer for observer program by comparing the memory content in a network environment as claimed in copending application '714.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (U. S. Patent 5,964,839) and further in view of Togawa (U. S. Patent 6,240,530).

2. With respect to claim 1, Johnson teaches a system for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system (col.2 line 44 to col.3line 66), the system comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program; and accessing instructions that access the observer data, generating instructions that generate results from the comparing, wherein the results generated indicate whether the observer program is present on the computer system; and outputting instructions that obtain the results and provide the results for a user (col.12 line 51 to col.14 line 15).

Although the system disclosed by Johnson shows all the features of the claimed limitation, but Johnson does not specifically disclose comparing instructions that compare the observer data with memory data read in from memory.

In an analogous art, Togawa, on the other hand discloses computing environment that relates to method and apparatus for providing reading instructions that read memory of the computer system to obtain memory data, comparing instructions that compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (col.8 line 10 to col.11 line 28, and col.19 line 16 to col.20 line 10). Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Johnson and Togawa, because Togawa's method of detection and removal of computer spyware (malware) by using detection and selection mechanism would not only promote security structure in the system of Johnson during monitoring information and data collection, such as keylogging, of host computing devices but will also provide safeguards against attempt by unauthorized person to breach security of system (Togawa,col.5 line 7 to line 38)

3. Claim 2 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system [col.13 line 55 to line 65).

4. Claim 3 is rejected as above in rejecting claim 1, wherein the outputting instructions provide the results to a user through a graphical user interface (col.8 line 21 to line 35).

5. Claim 4 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system (Togawa: col.19 line 10 to col.20 line 65).

6. Claim 5 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by opening a file located on storage media and by examining contents of the file (Togawa: col.19 line 10 to col.20 line 65).

7. Claim 6 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of a plurality of observer programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (Togawa: col.19 line 10 to col.20 line 65).

8. Claim 7 is rejected as above in rejecting claim 1, further comprising countermeasure instructions wherein the countermeasure instructions alter the operation of the observer program (Togawa: col.19 line 10 to col.20 line 65).

9. Claim 8 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering observer program configuration data (Togawa: col.19 line 10 to col.20 line 65).

10. Claim 9 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering a file on the computer system (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

11. Claim 10 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering reporting data generated by

the observer program (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

12. Claim 11 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing reporting data generated by the observer program (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

13. Claim 12 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing a file of the observer program (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

14. Claim 13 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of observing activity typical of observing programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (Johnson: (col.12 line 51 to col.14 line 15, and Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

15. Claim 14 is rejected as above in rejecting claim 1, further comprising the observer data, wherein the observer data includes a list of files and modules that are part of the observer program software, and wherein the reading instructions read the memory of the computer system by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system, and wherein the reading instructions also read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system,

and wherein the outputting instructions provide the results to a user through a graphical user interface (Johnson: (col.12 line 51 to col.14 line 15, and Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

16. Claim 15 is rejected as above in rejecting claim 1, wherein the system is made available over a computer network through a web site (Johnson: Fig.1 col.4line 30 to col.5 line 38).

17. With respect to claim 16, Johnson teaches a system for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system (col.2 line 44 to col.3line 66), the system, comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program; and means for accessing the observer data; means for generating results from the comparison, wherein the results generated indicate whether the observer program is present on the computer system; and means for outputting the results for a user (col.12 line 51 to col.14 line 15).

Although the system disclosed by Johnson shows all the features of the claimed limitation, but Johnson does not specifically disclose comparing instructions that compare the observer data with memory data read in from memory.

In an analogous art, Togawa, on the other hand discloses computing environment that

relates to method and apparatus for providing means for reading memory of the computer system to obtain memory data, means for comparing the observer data with memory data to determine whether the observer program is present on the computer system (col.8 line 10 to col.11 line 28, and col.19 line 16 to col.20 line 10).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Johnson and Togawa, because Togawa's method of detection and removal of computer spyware (malware) by using detection and selection mechanism would not only promote security structure in the system of Johnson during monitoring information and data collection, such as keylogging, of host computing devices but will also provide safeguards against attempt by unauthorized person to breach security of system (Togawa,col.5 line 7 to line 38)

18. With respect to claim 17, Johnson teaches a method for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system (col.2 line 44 to col.3line 66), the method comprising the steps of:

accessing observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program; generating results from the reading and comparing,

wherein the results generated indicate whether the observer program is present on the computer system; and outputting the results for a user (col.12 line 51 to col.14 line 15).

Although the system disclosed by Johnson shows all the features of the claimed limitation, but Johnson does not specifically disclose comparing instructions that compare the observer data with memory data read in from memory.

In an analogous art, Togawa, on the other hand discloses computing environment that relates to method and apparatus for providing reading memory of the computer system to obtain memory data; comparing the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (col.8 line 10 to col.11 line 28, and col.19 line 16 to col.20 line 10).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Johnson and Togawa, because Togawa's method of detection and removal of computer spyware (malware) by using detection and selection mechanism would not only promote security structure in the system of Johnson during monitoring information and data collection, such as keylogging, of host computing devices but will also provide safeguards against attempt by unauthorized person to breach security of system (Togawa,col.5 line 7 to line 38)

19. With respect to claim 18, Johnson teaches a computer-readable medium containing instructions for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing

on the computer system, wherein the instructions are executable to (col.2 line 44 to col.3line 66) comprised of the steps of:

access observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program; generate results from the reading and comparing, wherein the results generated indicate whether the observer program is present on the computer system; and output the results for a user (col.12 line 51 to col.14 line 15).

Although the system disclosed by Johnson shows all the features of the claimed limitation, but Johnson does not specifically disclose comparing instructions that compare the observer data with memory data read in from memory.

In an analogous art, Togawa, on the other hand discloses computing environment that relates to method and apparatus for providing; read memory of the computer system to obtain memory data; compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system;(col.8 line 10 to col.11 line 28, and col.19 line 16 to col.20 line 10).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Johnson and Togawa, because Togawa's method of detection and removal of computer spyware (malware) by using detection and selection mechanism would not only promote security structure in the system of Johnson during monitoring information and data collection, such as keylogging, of host computing devices but will also provide safeguards

against attempt by unauthorized person to breach security of system (Togawa,col.5 line 7 to line 38).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Zia whose telephone number is 571-272-3798. The examiner can normally be reached on 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sz
March 1, 2007

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